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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 814

RICHARD D. IRWIN AND ANNE MARIE IRWIN,
Petitioners,

vs.

DEMPSEY-TEGELER & CO., INC., A CORPORATION,
Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN H. BISHOP,
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Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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Respondent's brief in opposition is a vigorous attempt to have this Court decide the merits of the Petition on the basis of the depositional testimony below. Further, much discussion is made with respect to the question of ratification. All of that is beside the basic question raised in the Petition—Were petitioners, through the implement of Rule 56 of the Federal Rules of Civil Procedure, denied their constitutional right to a jury trial? They were, as is demonstrated in the Petition.

Respondent's failure in their brief to treat of the cases of this Court and the Courts of Appeals of the Second, Sixth, Eighth, Ninth, and Tenth Circuits, which are cited at pages 17 through 19 of the Petition, can only be con-

strued as an admission that the decision below is indeed in direct conflict with those decisions, which it is.

The fact of the matter (and respondent's repetitive use of the adjective "undisputed" will not change it) is that Irwin's *knowledge* and *intent* presented genuine issues of fact for a jury. A jury trial was sought below; yet, and apart from the conflict among the circuits, petitioners right thereto under the Seventh Amendment was abrogated by the improper application of Rule 56 of the Federal Rules of Civil Procedure.

It can hardly be said that this is not a matter of importance in view of the decision in *Ross* v. *Bernhard,* No. 42. October Term, 1969, ... U. S. ..... (February 2, 1970).

The Petition herein has simply not been responded to.

Petitioners request that a writ of certiorari be granted.

Respectfully submitted,

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